

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5141 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JASHBHAI M. PATEL

Versus

DHULABHAI LAKHABHAI

Appearance:

MR RR SHAH FOR MR AJ PATEL for Petitioners
MR DM THAKKAR for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/09/96

ORAL JUDGMENT

Heard learned counsel for the parties. This Special Civil Application arises out of the proceedings under Section 32G of the Bombay Tenancy & Agricultural Lands Act 1948 (hereinafter referred to as the 'Act 1948') initiated by the Mamlatdar and ALT Borsad in respect of the land of Survey No.215, admeasuring two acres, 29 gunthas, situated at village Umlav, Taluka Borsad, District Kaira.

2. In those proceedings, the petitioner appeared before the Mamlatdar and ALT and contended that the land in question was subject matter of surrender proceedings before the said authority in Tenancy Case No.576 of 1955 which has been decided on 19th March 1956. In the said tenancy case, the Mamlatdar was pleased to pass the order of surrender after complying with the procedure laid down under the provisions of the Act 1948. That order of surrender has not been challenged by the respondent. In these proceedings, the Mamlatdar under its order dated 5.1.80 held that surrender of the land made by the tenant in favour of the owner is illegal and therefore the tenant continues to be legal tenant of the land in dispute. It has further been held by the Mamlatdar that the tenants applied to obtain possession of the land from the land owner and then purchase price shall be fixed. The petitioner therefore preferred Tenancy Appeal No.2871 of 1979 against the aforesaid order of the Mamlatdar before Deputy Collector, who allowed the said appeal under its order dated 19th March 1981 and set aside the order of the Mamlatdar dated 5.1.80. The appellate authority held that the surrender of the land made by the tenant-respondent in favour of the land owner was legal. The tenant-respondent filed Revision Application before the Gujarat Revenue Tribunal against the order of Deputy Collector. The Gujarat Revenue Tribunal under its order dated 8.9.83 accepted the said Revision Application and held that the legal tenancy of the tenant/respondent subsists on 1.4.57. The surrender of the possession of the land in dispute by tenant-respondent to the land owner-petitioner was declared to be null and void. The petitioner-land owner was held to be unauthorised occupier of the land in dispute. The order of the Mamlatdar dated 5.1.81 was confirmed with directions that the Mamlatdar shall take consequential proceedings under Section 32G of the Act 1948 to fix purchase price of the land as the tenant is declared to be deemed purchase of this land and he was legal tenant of this land as on 1.4.57. Hence this Special Civil Application by the petitioner before this Court.

3. The learned counsel for the petitioner contended that both the Mamlatdar and the Gujarat Land Tribunal have not drawn distinction in between dispossession and voluntary possession of the land to the land owner by the tenant. Under the provisions of Section 32(1)(b), the learned counsel for the petitioner contended that voluntary delivery of possession by the tenant to the landlord is not dispossession of tenant by the landlord and as such, he could not have been held to be legal

tenant as on 1.4.57 and his possession could not have been held to be legal on the land as on 1.4.57. The voluntary possession delivered to the petitioner by the respondent has illegally been held to be null and void. Here is a case of voluntary surrender of possession and as such, the Tribunal has committed illegality in holding it to be a case of dispossession of the tenant. In support of this contention, the learned counsel for the petitioner strongly placed reliance on the decision of Supreme Court in the case of Dhondiram Tatoba Kadam v/s. Ramchandra Balwantrao Dubal (Since Decd.) By His Lrs. & Anr., reported in 36(1) GLR 344.

4. On the other hand, the learned counsel for the respondent contended that the so-called surrender of possession by the tenant to the petitioner-owner was not in accordance with the provisions of the Act 1948 and as such, the Mamlatdar as well as the Tribunal have rightly held that legally the tenancy of the tenant subsists as on 1.4.57. It has further been contended that the legal formalities for the voluntary surrender as provided under Section 15 of the Act 1948 have not been completed and as such, it is a case of dispossession of a tenant from his lawful possession from the land in dispute.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. The tenant-respondent, on 16.7.56, has given statement before the Extra Aval Karkoon, who was exercising at that time, the powers of Mamlatdar, that he does not want to cultivate the land and want to hand over possession of the land to the land owner. Not only this, he had also executed a document in favour of the owner on 15.3.56 stating therein that he is handing over possession of the land to the owner. This document has been produced by the petitioner in those proceedings. A certified copy of this document has been produced in the proceedings of this case. It is not in dispute that the respondent-tenant was not in possession of the land on 1.4.57. The petitioner-owner was in possession of the land earlier to 1.4.57 and he continues to be in possession for all these years. The Tribunal has entered into a question on which date the possession of the land has been delivered by the tenant to the owner, i.e. on 15.3.56 or 15.7.56. It is necessary to mention here that on 16.7.56, the Extra Aval Karkoon exercising the powers of Mamlatdar, made an order in connection with the surrender of the possession of the land in question by the tenant-respondent to the petitioner-landlord. But one fact was clear that earlier to 1.4.57, the possession

of the land in dispute has been given by the tenant to the landlord, i.e. the petitioner. In view of this fact, it is hardly of any substance whether the possession was given to the landlord by the tenant on 15.3.56 or 15.7.56 though the document dated 15.3.56 is a document of receipt of possession of land by the petitioner from the defendant-tenant. The Tribunal has proceeded with presumption that the possession has been handed over by the tenant to the landlord on 16.7.56, but that possession was not considered to be legal on the ground that formalities which are mandatory in order to hold the surrender to be legal and valid have not been complied with by the Extra Aval Karkoon. The Tribunal has given judgment in the present case proceeding on the ground that for legal and valid surrender of land, formalities are required to be complied with as per provisions of the Act 1948. This is a clear error which has been committed by the Tribunal. It is not the case of dispossession of the tenant by the land owner. In case it would have been a case of dispossession, the matter would have been different and it could have been legal only in case it has been done in accordance with the provisions of Section 29 or any other provisions of the Act 1948. But it was a case of voluntary surrender of possession by the tenant to the landlord. The Tribunal has accepted it to be a case of voluntary surrender of possession but held it to be not legal only on the ground that the formalities as provided under Section 15 of the Act have not been complied with. When the Tribunal has accepted it to be a case of voluntary surrender of possession by the respondent to the petitioner, then there is no question of grant of relief in favour of the respondent-tenant. The legal tenancy did not subsist on 1.4.57 and as such, the respondent-tenant could not have been considered to be a deemed purchaser of the land in question. The Apex Court in the case of Dhondiram Tatoba Kadam v/s. Ramchandra Balwantrao Dubal (Since Decd.) By His Lrs. & Anr. (supra) has considered this aspect in para-4 which reads as under:

"Even then the question is if the appellant on facts found is entitled to the declaration that he became a purchaser of land by operation of law under Sec.32(1-B). It has been found by the High Court that the appellant was in possession from 1952 to 1956, thus, he satisfied the first requirement of being in possession on the appointed date. But that alone was not sufficient as a tenant should have been dispossessed before the 1st day of April 1957.

It was found by the High Court that the appellant surrendered sometime before August 1956 which was established by an entry in the revenue records made in December 1956. The Tribunal too found that the appellant had surrendered his possession as was clear from the mutation entry supported by absence of entries in favour of appellant from 1959-58 to 1968-69. The difference between the Tribunal and the High Court was in construction of the nature of surrender. The Tribunal found it to be invalid as no oral surrender could be effected after Amendment Act 13 of 1956 whereas the High Court was of opinion that in absence of any evidence as to the actual date of surrender, there was no reason not to accept the case of plaintiff that surrender was before December 1956 and, therefore, it was in accordance with law. In any case both the Tribunal and the High Court concurred on the surrender by the appellant. The effect of surrender was that the appellant ceased to be tenant. Assuming that surrender was invalid and the appellant left the possession over land of his own accord, was he dispossessed as contemplated in Sec.32(1-B) of the Act? Voluntary giving up of possession does not amount to dispossession unless the law provides for it. 'Dispossess' according to Black's Law Dictionary means: "To oust from land by legal process; to eject, to exclude from reality." The dispossession should have been, therefore, either by legal process or by physical act of exclusion. It would not include leaving possession voluntarily or by surrender. If the words would have been that if such a person was not in possession before April 1, 1957 then a tenant who surrendered or left the possession voluntarily could be included in it. But the legislature having used a stronger word it should, in absence of any indication to the contrary, be understood in its normal sense. A tenant surrendering the land either in accordance with the provisions of law or leaving possession voluntarily would not be covered in the expression 'dispossessed'. The appellant, on the finding of the High Court, therefore, was not dispossessed. Even if the surrender was not valid as found by the Tribunal then the appellant shall be deemed to have left possession voluntarily. In either case it was not dispossession. The appellant, therefore did not satisfy the second requirement. Consequently he did not become purchaser of the land under

Sec.32(1-B) of the Act."

7. In view of the documents of receipt of surrender of possession, and decision of Supreme Court in the aforesaid case, the order of the learned Gujarat Revenue Tribunal cannot be allowed to stand. In the result, this Special Civil Application succeeds and the same is allowed. The order of the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A.628 of 1981 dated 8.9.83, is quashed and set aside. Rule made absolute. No order as to costs.

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(sunil)